

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONTE MCCLELLON,

Defendant.

CASE NO. 2:22-CR-00073-LK

ORDER DENYING SECOND  
MOTION TO STAY IMPOSITION  
OF JUDGMENT PENDING  
APPEAL

This matter comes before the Court on two motions from Defendant Donte McClellon: (1) Pro Se Motion for Bond/Release pending Appeal, Dkt. No. 355, and (2) Pro Se Motion to Stay Restitution and Forfeiture pending Appeal, Dkt. No. 356. The Government filed a consolidated response arguing that neither motion meets the high standard for reconsideration of the Court's prior ruling, and both motions also lack merit. Dkt. No. 358. For the reasons discussed below, the Court denies both motions.

## I. BACKGROUND

On January 11, 2024, a jury convicted Mr. McClellon of three counts of Wire Fraud, in violation of 18 U.S.C. § 1343, and two counts of Bank Fraud, in violation of 18 U.S.C. § 1344(2). Dkt. No. 252 at 1–2; *see also* Dkt. No. 174 at 4–11 (Second Superseding Indictment). On May 29, 2024, the Court held a hearing and sentenced Mr. McClellon to a total term of 42 months in the custody of the United States Bureau of Prisons, followed by three years of supervised release with standard and special conditions. *See* May 29, 2024 Minute Order; Dkt. No. 299 (judgment). Mr. McClellon promptly filed a notice of appeal. Dkt. No. 300. He then filed a motion to stay his sentence pending appeal, Dkt. No. 301, and the Court denied that motion on June 17, 2024, Dkt. No. 307. Approximately eight months later, Mr. McClellon filed these motions. Dkt. Nos. 355, 356.

## II. DISCUSSION

### A. Mr. McClellon’s Motion for Bond/Release Pending Appeal

In his Pro Se Motion for Bond/Release pending Appeal, Mr. McClellon seeks “to be released until the conclusion of the currently pending direct appeal[.]” Dkt. No. 355 at 1. He contends that his prior counsel filed a Motion to Stay Sentence Pending Appeal “that made zero sense” without “deliver[ing] on his other promises to file a Motion to Stay Forfeiture and Restitution pending Appeal as well as Motion for Bond pending Appeal[.]” *Id.* Mr. McClellon “seeks to rectify” this situation by filing “the correct motions . . . that mirror[] Defendant’s actual instructions and wishes.” *Id.* at 1–2. He also contends that he is entitled to credit under the First Step Act and that his speedy trial rights were violated. *Id.* at 2–3. He thus seeks immediate release. *Id.* at 3.<sup>1</sup>

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<sup>1</sup> Mr. McClellon requests to have both of his motions heard by the Chief District Judge, Dkt. No. 355 at 1; Dkt. No. 356 at 1, but he is not entitled to have the judge of his choice consider his motions.

1 Mr. McClellon already moved to stay the imposition of his sentence and to obtain release  
2 from custody pending his appeal, Dkt. No. 301, and the Court denied that motion, Dkt. No. 307.  
3 His current motion seeking the same relief is thus a motion for reconsideration. “Motions for  
4 reconsideration are disfavored,” and courts in this district “will ordinarily deny such motions in  
5 the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal  
6 authority which could not have been brought to its attention earlier with reasonable diligence.”  
7 CrR 12(b)(13)(A).

8 Mr. McClellon has not identified any manifest error in the Court’s prior ruling. Nor has he  
9 identified any new facts or legal authority that could not have been brought to the Court’s attention  
10 earlier with reasonable diligence. His disagreement with the outcome of his prior motion “is an  
11 insufficient basis for reconsideration.” *Haw. Stevedores, Inc. v. HT & T Co.*, 363 F. Supp. 2d 1253,  
12 1269 (D. Haw. 2005). Finally, there is no basis for the Court to strike the motions his former  
13 counsel filed—and on which the Court has already ruled—as Mr. McClellon requests. Dkt. No.  
14 366 at 2–3. The Court therefore denies this motion.

15 **B. Mr. McClellon’s Motion to Stay Restitution and Forfeiture Pending Appeal**

16 Mr. McClellon has also filed a motion to stay his restitution and forfeiture judgments  
17 pending appeal. Dkt. No. 356. As part of the judgment in this case, Mr. McClellon was ordered to  
18 pay restitution in the amount of \$490,840.92. Dkt. No. 299 at 6. In addition, the Court entered a  
19 final order of forfeiture forfeiting to the United States Mr. McClellon’s interest in \$16,394.44 in  
20 U.S. funds seized on or about May 16, 2022, from a Webull Financial, LLC account. Dkt. No. 313  
21 at 1–3; *see also* Dkt. No. 269 (preliminary order of forfeiture). The Court agrees with the  
22 Government, Dkt. No. 358 at 4, that to the extent these aspects of the judgment were part of Mr.  
23 McClellon’s June 2024 motion to stay the judgment, Dkt. No. 301, his current motion constitutes  
24 an insufficiently supported motion for reconsideration; the Court therefore denies the motion on

1 this basis.<sup>2</sup> *Compare* Dkt. No. 356 at 3, 11 (motion arguing that the Bail Reform Act governs and  
 2 the factors therein weigh in his favor), *with* Dkt. No. 307 at 2–6 (the Court’s prior Order applying  
 3 the Bail Reform Act factors).

4       Regardless of whether this motion seeks reconsideration, however, it also fails on the  
 5 merits. While an appeal is pending, the Court “may stay—on any terms considered appropriate—  
 6 any sentence providing for restitution[.]” Fed. R. Crim. P. 38(e). And “[i]f a defendant appeals  
 7 from a conviction or an order of forfeiture, the court may stay the order of forfeiture on terms  
 8 appropriate to ensure that the property remains available pending appellate review.” Fed. R. Crim.  
 9 P. 32.2(d). District courts are “not required to stay forfeiture proceedings pending [a defendant’s]  
 10 direct appeal.” *United States v. Houghton*, 132 F. App’x 130, 132 (9th Cir. 2005).

11       Although the Ninth Circuit has not adopted criteria for district courts to consider when  
 12 ruling on a motion to stay forfeiture pending appeal, other courts have considered the following  
 13 factors: “1) the likelihood of success on appeal; 2) whether the forfeited asset is likely to depreciate  
 14 over time; 3) the forfeited asset’s intrinsic value to defendant (i.e., the availability of substitutes);  
 15 and 4) the expense of maintaining the forfeited property.” *United States v. Ruiz-Hernandez*, No.  
 16 CR22-0197JLR, 2024 U.S. Dist. LEXIS 135629, at \*3 (W.D. Wash. July 31, 2024) (quoting  
 17 *United States v. Grote*, 961 F.3d 105, 123 (2d Cir. 2020)); *see also United States v. Real Prop.*  
 18 *Located at 16549 Vail Rd. SE, Yelm, Washington, Thurston Cnty. Parcel No. 22630220000*, No.  
 19 C14-5231RBL, 2018 WL 4510064, at \*1 (W.D. Wash. Sept. 20, 2018); *United States v. Riedl*, 214

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22 <sup>2</sup> Local Criminal Rule 12(b)(13)(C) provides that “[n]o response to a motion for reconsideration shall be filed unless  
 23 requested by the court.” Although the Court did not request a response, it has considered the Government’s response  
 24 to this motion because Mr. McClellon did not style his motions as seeking reconsideration, and it is not clear that this  
 motion is limited to seeking reconsideration. However, disregarding the Government’s response would not change the  
 result.

1 F. Supp. 2d 1079, 1082 (D. Haw. 2001).<sup>3</sup> These factors were developed in a different context, and  
 2 although “the Court does not consider itself strictly bound by these factors,” it “will nonetheless  
 3 consult them in exercising its discretion.” *United States v. Babichenko*, No. 1:18-CR-00258-BLW,  
 4 2025 WL 404461, at \*3 (D. Idaho Feb. 4, 2025).

5 Mr. McClellon argues that his restitution and forfeiture judgments should be stayed  
 6 pending his appeal because his speedy trial rights were violated. Dkt. No. 356 at 2–11. However,  
 7 the Court considered and rejected that contention when it rejected Mr. McClellon’s first motion to  
 8 stay his sentence. Dkt. No. 307 at 6. Nothing has changed in the interim, and this factor thus does  
 9 not support a stay of restitution or forfeiture. Because the forfeited asset is money, none of the  
 10 other three factors support a stay either. *See, e.g., United States v. Miller*, No. 17-CR-00213, 2020  
 11 WL 525125, at \*1 (E.D. Va. Jan. 27, 2020) (“[B]ecause money is fungible, there is no reason to  
 12 stay the forfeiture order with respect to those proceeds.”). Accordingly, the Court declines to stay  
 13 restitution or forfeiture pending appeal.

### 14 III. CONCLUSION

15 For the foregoing reasons, the Court DENIES Mr. McClellon’s Motion for Bond/Release  
 16 pending Appeal, Dkt. No. 355, and his Motion to Stay Restitution and Forfeiture pending Appeal,  
 17 Dkt. No. 356.

18 Dated this 24th day of March, 2025.

19 

20 Lauren King  
 21 United States District Judge

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 23 <sup>3</sup> The Ninth Circuit has not provided a test to determine whether a stay of restitution is warranted pending appeal, but  
 24 some courts consider the likelihood of success on the merits of the appeal. *See, e.g., United States v. Babichenko*, No.  
 1:18-cr-00258-BLW, 2025 WL 404461, at \*3 (D. Id. Feb. 4, 2025).